



May 28, 2019

Mr. Eric Wilson  
Bureau Chief  
Idaho Department of Lands  
300 N. 6<sup>th</sup> Street, Suite 103  
Boise, ID 83702

Sent via email to: [rulemaking@idl.idaho.gov](mailto:rulemaking@idl.idaho.gov)

RE: Docket 20-0302-1901, Rulemaking for IDAPA 20.03.02

Dear Mr. Wilson,

The Idaho Associated General Contractors (AGC) is proud to be Idaho's largest network of construction professionals. Our almost 600 member companies hail from each of the state's 44 counties and are actively engaged in building the commercial spaces where all Idahoans work, manufacture goods, seek medical care, educate their youth, and worship along with the roads, bridges, utilities, and other critical infrastructure that ties it all together.

Collectively, Idaho AGC members either own or operate a significant share of the active aggregate mines (i.e. gravel pits) across Idaho. As such we have a direct interest in the above mentioned rulemaking activity and continue to monitor its development closely.

The Idaho AGC believes that to date the Idaho Department of Lands (IDOL) has done a good job ensuring that the rulemaking process is fair, open, and transparent. We appreciate the willingness of you and your staff to consider comments from a wide range of stakeholders and balance the need to implement H. 141 with the goal of ensuring that Idaho mine operators continue to prosper.

The Idaho AGC would like to submit the following comments and hope that IDOL consider them when preparing the next draft of the proposed rule.

**#1 – Overall Scope of Rule.**

The Idaho AGC agrees wholeheartedly with the comments made in the May 15, 2019 letter from the Idaho Mining Association (IMA) regarding the overall scope of the rule. Specifically, that H. 141 does not give IDOL broad sweeping authority to expand the Department's authority to regulate all water quality issues on any mine site. The regulation of water quality is the sole responsibility of the Idaho Department of Environmental Quality and the U.S. Environmental Protection Agency. All aspects of the IDOL rule must remain within the scope of its authority and not seek to expand that mission.

**#2 – Application Fees (Section 068).**

The Idaho AGC has concerns that the fees outlined in the proposed rule remain significantly higher than almost every other state in the region. Given that up until now there has been no fee at all, jumping to such an extremely high rate seems excessive.

Secondarily, the Idaho AGC believes that the fee for the renewal of an existing application should be less than that of a new submittal.

**#3 – Financial Assurance Requirements (Section 120).**

The Idaho AFC has concerns that the latest draft of the rule includes overly vague language in subsection 120.02 would encourage IDOL staff to assume that all applications should require assurance at \$15,000 per acre. In reality, most operations covered by this provision (and governed by Section 69 of the rule) would merit far less assurance. Currently these operations are providing a bond of \$1,500 to \$2,500 per acre and jumping to \$15,000 would create an undue burden not intended by the Legislature.

The Idaho AGC suggests that the rule be updated to read:

02. Financial Assurance for Operations With Five (5) or Less Affected Acres.
  - a. The amount of financial assurance shall be five thousand dollars (\$5,000) for each acre of affected land unless the Board has determined that a different amount is necessary as outlined in subsection 120.02.b.
  - b. Should the Board determine that financial assurance stipulated in subsection 120.02.a does not provide sufficient means to meet the requirements of Sections 47-1506, 47-1510, and 47-1511, Idaho Code, or should the Board determine that the stipulated amount is too high, it may adjust the amount to a level that meets these requirements.
  - c. Under no circumstances shall the amount of financial assurance exceed fifteen thousand dollars (\$15,000) for each acre of affected land unless:
    - i. The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such financial assurance is necessary; and
    - ii. The Board has conducted a hearing where the operator is allowed to give testimony to the Board concerning the amount of the proposed financial assurance, as provided by Section 47-1512(c), Idaho Code. The operator may, in writing, waive the right to a hearing.

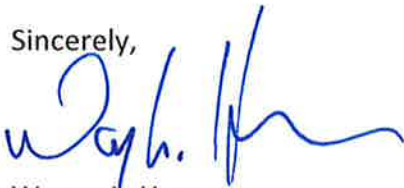
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The Idaho AGC believes that this language sets the expectation that the required financial assurance for operations covered by this section to be \$5,000 unless IDOL demonstrates that a different amount is necessary. In cases where IDOL wishes to adjust the rate, it would be allowed to set any rate between \$0 and \$15,000 without any additional administrative burden. In cases where IDOL wishes to exceed \$15,000, it would be required to provide the operator the opportunity for a hearing, as provided for in Idaho Code.

We look forward to working with you and the rest of the IDOL team on fine-tuning this provision of the rule.

The Idaho AGC will continue to monitor the rulemaking process and may provide additional comments when the need to do so arises.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Wayne L. Hammon', with a stylized flourish at the end.

Wayne L. Hammon  
CEO, Idaho AGC